

Journal of Legislation

Volume 28 | Issue 1

Article 2

1-1-2002

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Recommended Citation

Brien, Peter (2002) "Voter Pamphlets: The Next Best Step in Election Reform," *Journal of Legislation*: Vol. 28: Iss. 1, Article 2.
Available at: <http://scholarship.law.nd.edu/jleg/vol28/iss1/2>

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VOTER PAMPHLETS: THE NEXT BEST STEP IN ELECTION REFORM

Peter Brien*

In response to the contested 2000 presidential election, federal and state policymakers have instigated wide-ranging efforts to enact election law reforms. Curiously, voter pamphlets have not received significant attention as an efficient and low-cost voter education reform that might well have prevented the Florida debacle by reducing the number of spoiled or mismarked ballots in 2000. State-produced voter pamphlets deserve an expanded role in the administration of elections in order to remedy many of the flaws that affect elections across the United States. Although only a few states produce voter pamphlets for elections, the available data strongly indicate that the pamphlets should be at or near the top of any policymaker's list of reforms. This article presents the experiences of these states, examines current research and data, and recommends that federal assistance be provided to encourage state election officials to produce and disseminate voter pamphlets prior to general elections.

I. OVERVIEW

The 2000 presidential election and subsequent spate of recounts and legal challenges have focused the attention of policymakers nationwide on devising meaningful election reform. Congress is currently examining a broad array of reforms including: improving access to ballots and polling places,¹ standardization of vote counting procedures,² ballot design simplifications,³ examining reli-

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1. See S. 379, 107th Cong. (2001); see also S. 218, 107th Cong. (2001); S. 241, 107th Cong. (2001); S. 565, 107th Cong. (2001); H.R. 57, 107th Cong. (2001); H.R. 263, 107th Cong. (2001); H.R. 430, 107th Cong. (2001); H.R. 561, 107th Cong. (2001); H.R. 829, 107th Cong. (2001).

2. See S. 216, 107th Cong. (2001); see also H.R. 430, 107th Cong. (2001); H.R. 829, 107th Cong. (2001).

3. See S. 565, 107th Cong. (2001); see also S. 218, 107th Cong. (2001); H.R. 57, 107th Cong. (2001); H.R. 263, 107th Cong. (2001); H.R. 430, 107th Cong. (2001); H.R. 561, 107th Cong. (2001); H.R. 775, 107th Cong. (2001); H.R. 829, 107th Cong. (2001).

able voting technologies,⁴ adoption of uniform voting procedures nationwide,⁵ abolition or reformation of the electoral college,⁶ revision of voting procedures for members of the U.S. armed forces,⁷ increasing the security of vote counts,⁸ voter registration reform,⁹ and evaluation of alternative voting methods.¹⁰ It is surprising and regrettable that only scant attention is being paid to state-produced voter pamphlets as an election reform mechanism.¹¹

Voter pamphlets are publicly funded and disseminated publications that provide the recipients with an array of information on the candidates and the election process.¹² Historically, states have been more active in using voter pamphlets in conjunction with ballot initiatives rather than elections.¹³ Eighteen

4. See S. 565, 107th Cong. (2001); *see also* S. 218, 107th Cong. (2001); H.R. 57, 107th Cong. (2001); H.R. 263, 107th Cong. (2001); H.R. 430, 107th Cong. (2001); H.R. 561, 107th Cong. (2001); H.R. 775, 107th Cong. (2001); H.R. 829, 107th Cong. (2001).

5. See S. 216, 107th Cong. (2001); *see also* S. 241, 107th Cong. (2001); H.R. 57, 107th Cong. (2001); H.R. 430, 107th Cong. (2001); H.R. 561, 107th Cong. (2001); H.R. 829, 107th Cong. (2001).

6. See H.R.J. Res. 3, 107th Cong. (2001) (recommending abolition); *see also* H.R.J. Res. 1, 107th Cong. (2001) (recommending reform); H.R.J. Res. 17, 107th Cong. (2001); H.R. 57, 107th Cong. (2001); H.R. 561, 107th Cong. (2001).

7. See S. 379, 107th Cong. (2001); *see also* S. 479, 107th Cong. (2001); S. 565, 107th Cong. (2001); H.R. 561, 107th Cong. (2001); H.R. 57, 107th Cong. (2001).

8. See S. 218, 107th Cong. (2001); *see also* S. 216, 107th Cong. (2001); S. 241, 107th Cong. (2001); S. 379, 107th Cong. (2001); S. 565, 107th Cong. (2001); H.R. 263, 107th Cong. (2001); H.R. 775, 107th Cong. (2001).

9. See S. 565, 107th Cong. (2001); *see also* S. 379, 107th Cong. (2001); S. 218, 107th Cong. (2001); S. 479, 107th Cong. (2001); H.R. 775, 107th Cong. (2001); H.R. 561, 107th Cong. (2001); H.R. 263, 107th Cong. (2001); H.R. 57, 107th Cong. (2001); S. 241, 107th Cong. (2001); H.R. 430, 107th Cong. (2001).

10. See S. 218, 107th Cong. (2001); *see also* S. 368, 107th Cong. (2001); S. 379, 107th Cong. (2001); S. 479, 107th Cong. (2001); S. 565, 107th Cong. (2001); H.R. 57, 107th Cong. (2001); H.R. 263, 107th Cong. (2001); H.R. 430, 107th Cong. (2001); H.R. 561, 107th Cong. (2001); H.R. 775, 107th Cong. (2001).

11. The U.S. Congress is not alone in failing to recognize the value of voter pamphlets; several election reform commissions have done the same. Recently, election reform commissions have issued reports that recommended greater emphasis on voter education, but that did not recommend voter pamphlets specifically. See THE CONSTITUTION PROJECT'S FORUM ON ELECTION REFORM, BUILDING CONSENSUS ON ELECTION REFORM (2001); THE ELECTION CENTER'S NATIONAL TASK FORCE ON ELECTION REFORM, ELECTION 2000: REVIEW AND RECOMMENDATIONS BY THE NATION'S ELECTIONS ADMINISTRATORS (2001). One recent report on election reform mentioned voter pamphlets in passing. See THE NATIONAL COMMISSION ON ELECTION REFORM, TO ASSURE PRIDE AND CONFIDENCE IN THE ELECTORAL PROCESS 49 (2001).

12. I will use the term "voter pamphlets" throughout the article because that is the term that most states use. However, in a few jurisdictions, such as California and New York City, these publicly created aids are referred to as "voter guides." In this article, I will use "voter guides" only when referring to those publications created and distributed by privately funded special interest groups.

13. California has used voter pamphlets as far back as 1912, *see* interview with Joanna Southard, Elections Division, Office of the Secretary of State of California (Jan. 15, 2002), and

states currently produce voter pamphlets for ballot initiatives, but only the four states of Alaska, Oregon, Washington, and Utah currently have statutes that require voter pamphlets with candidate-related information to be created by the state and distributed to the public.¹⁴ Prior to certain elections, the Secretary of State of California has disseminated candidate-related information to California voters, but not pursuant to a specific provision of state election law.¹⁵ While there is little evidence to explain why the use of voter pamphlets has been limited to these western states, the practice's adoption there is hardly surprising considering that the initiative and referendum movement took root in the American west early in the twentieth century as part of the Progressive movement.¹⁶

In contrast to most state governments, national advocacy groups have been extremely aggressive in the creation and dissemination of voter guides as a voter education tool. The National Right to Life Committee has distributed voter guides since 1978,¹⁷ and the Sierra Club distributed approximately 1.3 million voter guides prior to the 1996 elections.¹⁸ The Christian Coalition has been distributing voter guides for a decade. In connection with the 1992 elections, they

Oregon has used them since 1903, see OFFICIAL 2000 GENERAL ELECTION ONLINE VOTERS' GUIDE, at <http://www.sos.state.or.us/elections/nov72000/guide/toc.htm> (Nov. 7, 2000).

14. See WASH. REV. CODE ANN. § 29.81 (West 2000); UTAH CODE ANN. § 20A-7-701 (2000); OR. REV. STAT. § 251.005 (1999); ALASKA STAT. § 15.58.010 (Michie 2000). In addition to these states, a number of local jurisdictions mail voter pamphlets, including several local California entities and the New York City Campaign Finance Board, which was created by New York voters in 1988.

15. See CAL. ELEC. CODE § 9084(e) (Deering 2001). Candidate information has appeared in certain California state voter pamphlets pursuant to a catch-all provision in the California Election Code that permits the Secretary of State to include in the pamphlet any "other materials that the Secretary of State determines will make the ballot pamphlet easier to understand or more useful for the average voter." *Id.* While candidate information and photos were listed in the California state voter pamphlets for the 1998 primary and general elections, they were not included in the pamphlets for the primary or general elections in 2000. See 1998 CALIFORNIA VOTER INFORMATION GUIDE, <http://vote98.ss.ca.gov/VoterGuide/Vote98.pdf> (last visited Apr. 4, 2002); 2000 CALIFORNIA OFFICIAL VOTER INFORMATION GUIDE, <http://vote2000.ss.ca.gov/VoterGuide/pdf/ballotpamphlet.pdf> (Aug. 14, 2000). In California, almost all of the candidate-related information in voter pamphlets has been provided in the pamphlets that were distributed by city or county-level agencies, rather than the state. See also CAL. ELEC. CODE § 13307 (Deering 2001) (dealing with nonpartisan local offices).

16. For a useful history of the initiative and referendum movement, see DAVID. D. SCHMIDT, *CITIZEN LAWMAKERS: THE BALLOT INITIATIVE REVOLUTION* 3-24 (1989); see also Daniel M. Warner, *Direct Democracy: The Right of the People to Make Fools of Themselves: The Use and Abuse of Initiative and Referendum, A Local Government Perspective*, 19 SEATTLE U. L. REV. 47, 49 (1995).

17. See Eliza Newlin Carney, *Campaign Finance: The Anti-Reformers*, 33 NAT'L J. 407 (2001).

18. See John H. Cushman, Jr., *Politics: The Issues; Environmentalists Ante Up to Sway A Number of Races*, N.Y. TIMES, Oct. 23, 1996, at A21.

distributed forty million guides to voters across the United States.¹⁹ In 1996, the number of Christian Coalition guides distributed reached forty-five million.²⁰ Even in the "off-year" elections of 1998, the group distributed thirty-five million voter guides.²¹ For the 2000 elections, the Christian Coalition reported that it distributed seventy million voter guides, which would have provided a voter guide to approximately 60% of all registered voters in the United States.²²

Until now, no research has specifically promoted the use of state-produced voter pamphlets in regard to general elections nationwide. Voter pamphlets have often been recommended as a tool to improve judicial elections in the United States,²³ and other authors have recommended that they be used more frequently for ballot initiatives.²⁴ This article presents an initial and long-overdue recommendation that state and federal policymakers should focus on state-produced voter pamphlets as a critical election law reform. The article will demonstrate that state-produced voter pamphlets provide an efficient and low-cost mechanism that can dramatically increase the quantity and quality of voter participation while addressing several of the factors that exacerbated the Florida vote counts and recounts: namely, confused or uninformed voters, poor ballot design, and generally inadequate efforts to educate voters.²⁵ Where voter pamphlets have been used, evaluations of them have been uniformly positive.²⁶ The events of Florida in the winter of 2000 notwithstanding, voter pamphlets should be given an expanded role in the administration of elections nationwide in order

19. See Gustav Niebuhr, *The Constituencies: Conservatives Out of Sidelines As Religious Coalition Gathers*, N.Y. TIMES, Sept. 13, 1996, at A22.

20. *Id.*

21. See NBC Nightly News: *Election Day Turnout to Decide Winners*, (NBC television broadcast, Oct. 31, 1998).

22. See Larry Witham, *Religion big factor in voters' choices*, WASH. TIMES, Nov. 9, 2000, at A7. The U.S. Census Bureau reported that there were 123,104,000 registered voters in 1998, the latest year for which data are available. See JENNIFER DAY & AVALAURA GAITHER, U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1998, at 5 tbl.C (2000).

23. See Roy A. Schotland, *Elective Judges' Campaign Financing: Are the State Judges' Robes the Emperor's Clothes of American Democracy?*, 2 J.L. & POL. 57, 127-28 (1985); see also Thomas R. Phillips, Comment, *Judicial Independence and Accountability*, 61 LAW & CONTEMP. PROBS. 127, 135 (1998); Kathryn Abrams, *Some Realism about Electoralism: Rethinking Judicial Campaign Finance*, 72 S. CAL. L. REV. 505, 527-28 (1999) (citing the recommendations of the ABA Task Force on Lawyers' Political Contributions); Richard L. Hasen, "High Court Wrongly Elected": A Public Choice Model of Judging and Its Implications for the Voting Rights Act, 75 N.C. L. REV. 1305, 1318 n.53 (1997).

24. See Clayton P. Gillette, *Is Direct Democracy Anti-Democratic?*, 34 WILLAMETTE L. REV. 609, 636 (1998); see also Nicole Bremmer Cásarez, *Corruption, Corrosion, and Corporate Political Speech*, 70 NEB. L. REV. 689, 748 (1991).

25. See generally James C. Smith et al., *Revitalizing Democracy in Florida, The Governor's Select Task Force on Election Procedures, Standards, and Technology* (Mar. 1, 2001), available at <http://vote.caltech.edu>.

26. See *infra* Section III for supporting data from four states.

to ameliorate many of the recurring flaws.

This article recommends that federal assistance be provided to encourage state election officials to produce and/or disseminate voter pamphlets prior to general elections.²⁷ Federal assistance to the states may be targeted to providing a free federal frank to enable the states to mail voter pamphlets to registered voters. More broadly, federal assistance might defray the costs to the states of developing, publishing, and disseminating voter pamphlets. The inexpensive nature of voter pamphlets as an election reform mechanism is discussed in more detail in Section II C, *Financing of Voter Pamphlets*. Recent indications are that federal assistance might be a long time in coming;²⁸ therefore, state election officials would be wise to begin preliminary plans for voter pamphlets as soon as possible in order to develop strategies that can be implemented by the time Congress acts.

Section II presents an overview of the content, format, and financing of state voter pamphlets as of 2000, explaining how the states vary in their conceptions of this voter education tool. The section then examines voter pamphlet costs and discusses the meaningful differences that exist between mailing voter pamphlets to residents and simply presenting information on a state election website. Section III presents recent research and data from Utah, California, Oregon, and Washington that indicate that voters overwhelmingly support state voter pamphlets, find them to be one of their best sources of election information, and want their use to continue.

II. STATE VOTER PAMPHLETS: CONTENT, FORMAT, AND FINANCING

The four states that mail voter pamphlets with candidate information have their voter pamphlet content and format regulated by statute.²⁹ Although there are a few meaningful differences among the election laws of the various states, any of these four states would serve well as a model for other states to follow.

27. See, e.g., S. 565, 107th Cong. (2001); H.R. 430, 107th Cong. (2001); S. 218, 107th Cong. (2001); S. 379, 107th Cong. (2001); S. 479, 107th Cong. (2001) (authorizing the appropriation of millions of dollars to encourage states to improve their election administration systems).

28. See Edward Walsh & Dan Balz, *One Year Later, Election Reform Remains Elusive: Changes Come in Only Handful of States*, WASH. POST, Nov. 13, 2001, at A3; see also Katharine Q. Seelye, *Voting System Changes Lag, Experts on Election Warn*, N.Y. TIMES, Apr. 4, 2001, at A18; Editorial, *Election Reform Stalls*, N.Y. TIMES, Apr. 30, 2001, at A18.

29. As noted, California election law currently does not contain detailed requirements for candidate information that is included in the voter pamphlet, although this situation is likely to change soon. With the passage of Proposition 34 in the fall of 2000, future candidates for statewide office who accept certain campaign spending limits will be entitled to purchase space in the state ballot pamphlet for candidate statements. See Prop. 34 (Cal. 2000), http://vote2000.ss.ca.gov/Voter-Guide/text/text_title_summ_34.htm (last visited Apr. 4, 2002).

A. *Candidate Statements*

Each state voter pamphlet permits the inclusion of a personal statement by the candidate, with the length of the statement varying according to the state's election law. No state election administrators retain editorial authority over the statements submitted by the candidate. The Alaska voter pamphlet allocates one full page for candidates for the office of President of the United States, Vice President of the United States, U.S. Senator, U.S. Representative, Governor, Lieutenant Governor, State Senator, and State Representative.³⁰ The length of each candidate statement is limited to 250 words for position statements and 150 words for a separate biographical statement.³¹

In Oregon, the list of offices for which candidates may submit statements is considerably longer. Candidate statements are permitted for individuals seeking the following offices: President of the United States, Vice President of the United States, U.S. Senator, U.S. Representative, Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, judge, State Senator, State Representative, and district attorney.³² Under Oregon election law, all candidate statements are required to begin with a summary of the candidate's occupation, educational and occupational background, and prior governmental experience.³³ The length of any candidate statement may not exceed 325 words.³⁴

Under Washington law, the length of the candidate statement varies according to the office that is being sought. Candidates seeking the office of President or Vice President of the United States, U.S. Senator, U.S. Representative, and Governor may contribute statements of up to 300 words.³⁵ Candidates running for State Senator, judge of the superior court, judge of the court of appeals, justice of the supreme court, and all state offices voted upon throughout the state (except Governor) may provide a statement of up to 200 words.³⁶ Candidates for State Representative may submit a statement not exceeding 100 words for inclusion in the Washington Voters Pamphlet.³⁷

Utah invokes a more restrictive regulatory system where, by statute, all candidate statements are limited to 100 words, and only the candidates for the following offices may submit statements concerning their qualifications: Governor, Lieutenant Governor, Attorney General, State Auditor, and State Treas-

30. ALASKA STAT. § 15.58.030 (a)-(c) (Michie 2001).

31. *Id.* at (e).

32. OR. REV. STAT. § 251.065 (1999).

33. *Id.* § 251.085.

34. *Id.* § 251.095(2).

35. WASH. REV. CODE ANN. § 29.81.310(1) (West 2001).

36. *Id.*

37. *Id.*

urer.³⁸ This list omits certain offices that typically appear above and below the aforementioned on the ballot. Utah has no statutory provision to permit statements by candidates for the offices of President or Vice President of the United States, U.S. Senator, or U.S. Representative in its voter pamphlet. Also, the Utah statute does not allow for statements from candidates seeking offices in the State Senate or State House of Representatives. Accordingly, in the November 2000 Utah Voter Information Pamphlet, there were no statements by candidates for the offices of President or Vice President of the United States included, nor any from candidates for State Senate or State House of Representatives; however, the pamphlet did contain contact information for some of the candidates for these offices. The 2000 pamphlet did feature statements from candidates running for the U.S. Senate and U.S. House of Representatives, despite the absence of a statutory mandate to do so.³⁹

The election laws of Alaska, Oregon, Washington, and Utah all permit recent photographs of candidates to be published along with their candidate statements.⁴⁰

B. Voter Participation Assistance

Each state's voter pamphlet provides the recipient with basic information on registration deadlines, the registration process, and additional voter education materials. For instance, Washington and Alaska law require that the voter pamphlets include an application for an absentee ballot.⁴¹ Utah law requires that the voter pamphlets contain information on how to receive an absentee ballot,⁴² and Utah also provides its voters with a mail-in registration form.⁴³ In addition, Alaska⁴⁴ and Oregon⁴⁵ pamphlets provide congressional and district maps and specific voting instructions.

In order to minimize voter confusion and voter error, the Alaska voter pamphlet includes sample ballots which reproduce for the voter the exact text

38. UTAH CODE ANN. § 20A-7-702(2)(f) (2001).

39. See UTAH VOTER INFORMATION PAMPHLET: GENERAL ELECTION, NOV. 7, 2000 at 85, available at http://www.governor.state.ut.us/lt_gover/2000vip/tableofcontents.htm [hereinafter UTAH VOTER INFORMATION PAMPHLET].

40. See WASH. REV. CODE ANN. §§ 29.81.220(2), 29.81.300 (West 2001); ALASKA STAT. §§ 15.58.020, 15.58.030(f) (Michie 2001); UTAH CODE ANN. § 20A-7-702(2)(h)(vi)(B) (2001); OR. REV. STAT. § 251.065 (1999).

41. See WASH. REV. CODE ANN. § 29.81.220(8) (West 2001); ALASKA STAT. § 15.58.020(5) (Michie 2001).

42. See UTAH CODE ANN. 20A-7-702(2)(j) (2001).

43. See UTAH VOTER INFORMATION PAMPHLET, *supra* note 39.

44. See ALASKA STAT. § 15.58.020(3) (Michie 2001).

45. See OR. REV. STAT. § 251.026(3)(a) (1999); see also OFFICIAL 2000 GENERAL ELECTION ONLINE VOTERS' GUIDE, *supra* note 13.

and format of each ballot that the voter will encounter. The voter is encouraged to examine the sample ballot and supplemental information and to bring the sample ballot into the voting booth.⁴⁶ The average Alaska voter in the fall of 2000 was equipped with candidate information and sample ballots for the following nine offices: President and Vice President of the United States, U.S. Senator, U.S. Representative, State Senator, State Representative, supreme court justice, superior court judge, and district court judge. In addition, the Alaska voter pamphlet provided the text and sample ballots for three proposed state constitutional amendments, two initiative petitions, and one referendum.

A different voter education approach is taken in Utah, where the Utah Voter Information Pamphlet features carefully written explanations with accompanying photographs that illustrate how the ballot is to be properly filled out.⁴⁷ Due to the variations in voting procedures among Utah's counties, there are different sets of instructions and different photographs that show the proper way to fill out a ballot depending upon the county of residence. Election law in Utah reveals one of the rare instances of a statutory requirement that ensures that voter pamphlets explain ballot-marking procedures for each county and explain how the ballot is to be marked for each procedure.⁴⁸ These explanations are prepared by the Lieutenant Governor's office.⁴⁹

The voter pamphlets of Washington, Alaska, Utah, and Oregon, all provide Internet addresses for voters seeking additional election information. Among the Internet addresses provided are those for the online version of the voter pamphlet, Secretary of State, political parties represented within the voter pamphlet, youth-related voting sites, politically related sites, and national and local news media sources. The 2000 voter pamphlets of Alaska and Washington also provided information on federal and state campaign finance laws.

C. Financing of Voter Pamphlets

The voter pamphlets of Alaska, Oregon, Washington, and Utah are publicly funded through appropriations by the state legislature. The states' costs to produce and disseminate voter pamphlets are quite low, ranging from \$0.21 per

46. This feature is a prime example of an election law reform that could be more widely replicated at little additional cost. The presence of a pre-printed sample ballot can likely overcome confusion associated with ballot design and the use of an unfamiliar voting procedure or voting technology. In addition, the sample ballot can help with deficiencies in a voter's recollection of the campaign, which might be quite significant. See Milton Lodge et al., *The Responsive Voter: Campaign Information and the Dynamics of Candidate Evaluation*, 89 AM. POL. SCI. REV. 309, 321 (1995).

47. See UTAH VOTER INFORMATION PAMPHLET, *supra* note 39, at 80-83.

48. See UTAH CODE ANN. § 20A-7-702(2)(i) (2001).

49. *Id.*

pamphlet in Utah to \$1.18 per pamphlet in Oregon. Public spending on voter education initiatives has historically been extremely low,⁵⁰ but the time has come for a minimal annual investment (an expenditure of one or two first-class stamps per voting household) to critically improve the administration of elections.

Alaska charges its electoral candidates for space within the voter pamphlet.⁵¹ Candidates for the offices of President or Vice President of the United States, U.S. Senator, U.S. Representative, Governor, Lieutenant Governor, Supreme Court justice, and court of appeals judge must pay \$300 each to be represented.⁵² Candidates for the offices of superior court judge and district court judge must pay \$150 each,⁵³ and candidates for State Senator and State Representative must pay \$100 each.⁵⁴ In addition, there is a charge of \$600 for each page purchased by the state chair or executive committee of a political party.⁵⁵ Political parties are limited to the purchase of two pages with the Alaska voter pamphlet.⁵⁶

For the 2000 general election in Alaska, the total cost of printing and mailing pamphlets to voters was almost \$245,000.⁵⁷ The Alaska Division of Elections estimated that postage costs were \$55,000—about 22% of the overall cost.⁵⁸ In Alaska, the Lieutenant Governor is required to mail voter pamphlets to each household with a registered voter.⁵⁹ The state of Alaska produces a different voter pamphlet in general elections for each of four geographic regions of the state. Despite the considerable size of the voter pamphlets, production costs are relatively minor. For example, in 2000, the Region I voter pamphlet was 160 pages and was produced at a cost of \$0.58 per copy.⁶⁰ The Region II voter pamphlet was 208 pages and was produced at a cost of \$0.62 per copy.⁶¹ The Region III voter pamphlet was 160 pages and was produced at a cost of \$0.58

50. One Supervisor of Elections in Florida recently stated that the state spends \$30 million annually to instruct citizens how to buy a lottery ticket, but allocates nothing for statewide voter education programs. *See generally* Smith et al., *supra* note 25.

51. *See* ALASKA STAT. § 15.58.060(a) (Michie 2000).

52. *Id.* at (a)(1).

53. *Id.* at (a)(2).

54. *Id.* at (a)(3).

55. *Id.* at (b).

56. *Id.* § 15.58.040(a).

57. *See* interview with Virginia Breeze, Election Projects Coordinator, Division of Elections for the state of Alaska (June 13, 2001).

58. *See id.* The four states highlighted in this discussion, Alaska, Washington, Oregon, and Utah, mailed their voter pamphlets to citizens using the bulk rate available to nonprofit agencies.

59. *See* ALASKA STAT. § 15.58.010 (Michie 2000).

60. *See* DIVISION OF ELECTIONS, STATE OF ALASKA OFFICIAL ELECTION PAMPHLET: REGION I (Oct. 2000), available at <http://www.gov.state.ak.us/lrgov/elections/oep2000/internet/html/2000oephome.htm>.

61. *See id.* at Region II.

per copy.⁶² Finally, the Region IV voter pamphlet was 136 pages and was produced at a cost of \$0.71 per copy.⁶³

Oregon also charges its candidates fees for appearing in the voter pamphlet. Candidates for the offices of President or Vice President of the United States, U.S. Senator, U.S. Representative, or any other statewide office must pay \$1000, while candidates for the office of State Senator, State Representative, or any other local office must pay \$300.⁶⁴ In 2000, Oregon printed and distributed roughly 1.7 million pamphlets at a total cost of approximately \$2 million. For statewide elections, Oregon law requires that its voter pamphlets be mailed to each post-office mailing address.⁶⁵ Based on the 2000 cost estimates, each voter pamphlet cost the state of Oregon approximately \$1.18 to create and distribute.⁶⁶

The state of Washington spent \$805,000 in 2000 for the production and distribution of its forty-seven-page voter pamphlet. In Washington, the Secretary of State is required to distribute the State of Washington Voters Pamphlet to each household in the state, to public libraries, and other locations as deemed appropriate.⁶⁷ In 2000, approximately three million voter pamphlets were distributed to Washington households; therefore, each voter pamphlet cost the state approximately \$0.27 per household.⁶⁸

Utah election officials report that the total cost of producing and distributing Utah's voter pamphlets is approximately \$250,000.⁶⁹ Unlike the laws of Alaska and Washington, the applicable Utah statute imposes no mailing requirement. Instead, voter pamphlets in Utah are to be inserted in newspaper issues between forty and fifteen days prior to the election, are to be available to citizens as needed, and are to be available at polling places.⁷⁰ Generally, there are 1.2 million of the approximately eighty-five-page voter pamphlets created and distributed for a statewide election; therefore, each voter pamphlet typically costs the state of Utah approximately \$0.21 to create and distribute.⁷¹

62. *See id.* at Region III.

63. *See id.* at Region IV.

64. OR. REV. STAT. § 251.095(1) (1999).

65. *Id.* § 251.175.

66. *See* interview with Fred Neal, Oregon Voters' Pamphlet Supervisor (July 26, 2001). This cost should be placed in perspective. Unlike the other states in this analysis, Oregon provided each household with well over 400 pages of information on candidates and statewide measures. *Id.*

67. WASH. REV. CODE ANN. § 29.81.210 (West 2000).

68. *See* interview with Sean Merchant, Voter Services Manager, Office of the Washington Secretary of State, (Nov. 14, 2001).

69. *See* interview with Amy Naccarato, Director of Elections for the State of Utah (May 31, 2001).

70. UTAH CODE ANN. § 20A-7-702(3) (2000).

71. *See* Naccarato, *supra* note 69. In 2000, printing costs for the Utah voter pamphlets were unusually high due to a paper shortage; pamphlets cost approximately \$0.33 each to create and

Based on the most recent data available from the 2000 elections, the per-unit cost of producing and disseminating voter pamphlets to citizens in these states was extremely low—generally less than the cost of two first-class stamps. As a complement to this discussion of low costs, Section III will present research and data that reveal the potential benefits that can be realized if voter pamphlets are given greater exposure nationwide.

D. One Caveat on Financing Voter Pamphlets: California

As noted above, the California Election Code allows candidates for nonpartisan city or county offices to place candidate statements in city or county voter pamphlets. The California Election Code also permits the local jurisdiction to charge the candidate a pro rata share of the cost of creating, publishing, and distributing the voter pamphlet.⁷² This seemingly innocuous provision has been the source of considerable controversy as potential candidates have complained about the high cost of placing their statements in California voter pamphlets. There is a significant difference between the practice of the states, such as Alaska, Oregon, Washington, and Utah, that establish flat fees for candidates and the practice in California that permits complete cost shifting to the candidates.

At the outset it should be observed that this facet of California election law has undergone and withstood legal challenges that the practice denies poorer candidates their First Amendment right to speech and their Fourteenth Amendment right to equal protection.⁷³ California state law also permits candidates who are indigent to have their statements printed without charge after submitting a statement of financial worth.⁷⁴

Nonetheless, candidate statement fees for political and judicial offices in California have generated sufficient controversy to serve as a warning for other jurisdictions that are investigating the best method of financing their voter pamphlets. The controversy also provides another justification for federal assistance in this area. In the 1997 election for the San Mateo County Board of Supervisors, only three of the seven candidates were able to pay the \$5800 fee to have their candidate statements included in the voter pamphlet.⁷⁵ In the 2000 primary, the cost of a candidate statement to candidates running for Los Angeles

distribute. *See id.*

72. CAL. ELEC. CODE § 13307(c) (Deering 2001).

73. *See NAACP v. Jones*, 131 F.3d 1317 (9th Cir. 1997); *see also Kaplan v. County of Los Angeles*, 894 F.2d 1076 (9th Cir. 1990) (holding that the system established in California for recovery of costs associated with the publication of election statements in voter pamphlets did not violate candidates' First and Fourteenth Amendment rights).

74. CAL. ELEC. CODE § 13309(a) (Deering 2001).

75. Mark Simon, *Four Candidates Criticize Statement Fee*, S.F. CHRON., Feb. 6, 1997, at A17.

County District Attorney was \$29,750.⁷⁶ If the candidate preferred the statement to be printed in Spanish as well as English, the cost doubled to \$59,500.⁷⁷ Candidates for the Los Angeles Board of Supervisors (District Five) faced a candidate statement fee of \$7200 (\$14,400 for English and Spanish).⁷⁸ For other local offices outside of Los Angeles, candidates also faced high statement fees, including \$1000 for Fullerton City Council candidates,⁷⁹ \$700 for La Habra City Council candidates,⁸⁰ and almost \$700 for Mayor of Salinas candidates.⁸¹

Judicial candidate statement filing fees have long been criticized by scholars and potential candidates as being unreasonably high.⁸² For a candidate to have a statement placed in the 2000 voter pamphlet describing his or her capabilities to serve as a Los Angeles County Superior Court Judge (e.g., Lance Ito), the candidate faced a fee of \$29,750 for English statements only and \$59,500 for English and Spanish versions.⁸³ Candidates for seats on the Los Angeles County Municipal Court faced varying fees in 2000 depending on the court. Los Angeles Municipal Court judge candidates paid a candidate statement fee of \$11,100 (\$22,200 for English and Spanish), while candidates for Culver Municipal Court judge only paid \$350 (\$700 for English and Spanish). Such controversies create an additional justification for federal assistance to enable state and local jurisdictions to shift some of the cost burden from lesser-financed candidates who otherwise would be deterred from seeking elected office.

There is a second controversy caused by high filing fees—the potential for candidates to manipulate the administration of voter pamphlets to deter challengers. For jurisdictions considering the adoption of voter pamphlets, the governing statutes must not allow a candidate to file to become a candidate by paying the filing fee and candidate statement fee (which can deter potential challengers if fees are sufficiently high), and then *withdraw* the candidate statement as soon as the filing period closes. California Election Code currently permits

76. See OFFICE OF THE REGISTRAR-RECORDER/COUNTY CLERK, COUNTY OF LOS ANGELES, ELECTION INFORMATION SECTION, ESTIMATED COST OF CANDIDATE STATEMENTS, PRIMARY ELECTION MARCH 7, 2000.

77. *Id.*

78. *Id.*

79. See Mary Beth Adomaitis, *Fullerton City Council*, L.A. TIMES, June 5, 2000, at B5.

80. See Brian Hall, *Five Take Out Council Papers as Filing Opens*, ORANGE CTY. REG., July 18, 1996, at 1.

81. See MONTEREY COUNTY, GUIDLINESGEN2000.PDF [sic], <http://www.mocovote.org/information> (last modified Jul. 30, 2001) (containing the 2000 California candidates' guidelines).

82. See Schotland, *supra* note 23; see also Abrams, *supra* note 23; Editorial, *Change the Way We Elect Judges*, L.A. TIMES, Jan. 25, 1996, at B9.

83. See OFFICE OF THE REGISTRAR-RECORDER/COUNTY CLERK, COUNTY OF LOS ANGELES, ELECTION INFORMATION SECTION, *supra* note 76. This fee seems to have declined in recent years. See Editorial, *Change the Way We Elect Judges*, *supra* note 82 (quoting the 1992 statement fee at \$65,000).

this loophole to exist.⁸⁴ In a similar vein, the high cost of candidate statements could allow an aging incumbent to file for re-election, pay the filing fee and candidate statement fee (thus deterring the opposition), and then sit by as his hand-picked colleague files for the office one minute before the deadline. The next day, the incumbent could announce his retirement as his colleague runs for the office unopposed.⁸⁵ To avoid such unintended usage, voter pamphlets must be drafted and administered with sufficient care and attention to detail.

E. A Mailed Voter Pamphlet Versus a Virtual Voter Pamphlet

Increasingly, government services are being provided over the World Wide Web, and the provision of election information is no exception. The vast majority of states, counties, and cities provide general voter information on their websites, including how and where to register, how to apply for absentee ballots, and what the applicable voter qualifications are in the jurisdiction. The argument might be made that this trend should obviate the need for a federal grant to permit states to mail voter pamphlets to their registered voters.

While there is no doubt that state and local governments are providing a critical and valuable service by posting this information, the provision of this information on a web page is inferior to mailing a voter pamphlet for at least five reasons. First, despite the dramatic increase in Internet usage by Americans in recent years, almost 60% of U.S. households did not have Internet access as of August, 2000.⁸⁶ Because of this "digital divide," a large segment of the population would be unable to access the voter information, and there is reason to believe that this population would most profoundly benefit from the information. It is well-established that voters of low socio-economic status have fewer cues with which to make voting decisions;⁸⁷ therefore, it is critical to provide those voters with information that they are able to readily and reliably access. Second, the Internet is simply not competitive with other sources of election information. The Pew Research Center reported that in 2000, only 6% of respondents noted that they got most of their information about the 2000 election

84. See CAL. ELEC. CODE § 13307(a)(3) (Deering 2001) (permitting candidates to withdraw candidate statements from the voter pamphlet until 5:00 PM of the next working day after the close of the nomination period).

85. See Scott Harris, *Electing Judges: It Takes the Wisdom of Solomon to Make a Choice*, L.A. TIMES, Oct. 23, 1988.

86. NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, U.S. DEP'T OF COMMERCE, FALLING THROUGH THE NET: TOWARD DIGITAL INCLUSION, A REPORT ON AMERICANS' ACCESS TO TECHNOLOGY TOOLS 1 (2000).

87. See generally David Moon, *What You Use Still Depends on What You Have: Information Effects in Presidential Elections, 1972-1988*, 20 AM. POL. Q. 427 (1992); see also David Moon, *What You Use Depends on What You Have: Information Effects on the Determinants of Electoral Choice*, 18 AM. POL. Q. 3 (1990).

from the Internet.⁸⁸ In another survey, 84% of respondents stated that they did not ever go online to get information about the 1998 elections.⁸⁹ While these findings are far from definitive, they indicate that the Internet is still an emerging medium when it comes to the dissemination of election information.

Third, websites are vulnerable to hackers and other individuals with nefarious motives, making the information potentially less secure than a mailed document. Many of the problems associated with Internet voting stem from the fact that security and confidentiality cannot be assured given the current state of technology.⁹⁰ Fourth, the provision of voter information on a website is an essentially passive measure that fails to specifically target registered and potential voters, and target them at the appropriate time (i.e., before the registration period closes) in the way that mailing a voter pamphlet to a household does. States that mail voter pamphlets to their citizens typically mail them only to those households that contain at least one registered voter; however, Oregon mails one to each household in the state.⁹¹ Fifth, a mailed voter pamphlet will often include a sample ballot which, depending on the jurisdiction, voters might be able to take with them into the voting booth so that they know where their preferred candidates' names appear and can vote to accurately reflect their preferences. A website simply cannot provide the same benefit. In the event that a website can provide a printable sample ballot, the digital divide discussed above would ensure that this benefit is only enjoyed disproportionately among the electorate. The Internet is so far behind printed material as a source of election information that California was reportedly paying its citizens to read the voter pamphlet online.⁹²

III. DATA AND RESEARCH ON VOTER PAMPHLETS: UTAH, CALIFORNIA, OREGON, AND WASHINGTON

Four states have conducted research and collected data to evaluate the impacts of state voter pamphlets on voters and elections. From 1980 through 1992, the Utah Lieutenant Governor's office commissioned a public opinion survey that presented voters with a series of questions concerning the Utah

88. See PEW RESEARCH CENTER FOR THE PEOPLE AND THE PRESS, JUNE 2000 VOTER ATTITUDES SURVEY, <http://www.people-press.org/questionnaires/june00que.htm> (last visited May 5, 2001).

89. See PEW RESEARCH CENTER FOR THE PEOPLE AND THE PRESS, 1998 TECHNOLOGY SURVEY, <http://www.people-press.org/questionnaires/tech98que.htm> (last visited May 5, 2001).

90. See generally CALIFORNIA INTERNET VOTING TASK FORCE, SECRETARY OF STATE OF CALIFORNIA, A REPORT ON THE FEASIBILITY OF INTERNET VOTING (Jan. 2000), available at <http://www.ss.ca.gov/executive/ivote/>.

91. See OR. REV. STAT. § 251.175(1) (1999).

92. Laura Castaneda, *Survey rates 365 Dentists on Price, Satisfaction*, S.F. CHRON., Oct. 28, 1996, at B1.

Voter Information Pamphlet. The survey was conducted six times over the twelve-year span, offering remarkable longitudinal data on voters' opinions of and reactions to the Utah Voter Information Pamphlet.⁹³ Over those twelve years, approximately 85% of voters read all or part of the pamphlet and approximately 90% of those who read it found it to be helpful. A more recent longitudinal survey of California voters from 1990 through 1998 showed that those voters found the pamphlets to be their most important source of election information. Similarly, a one-time survey of Oregon residents showed that the majority of Oregon voters found state-produced voter pamphlets to be helpful to them.

For the 2000 election, the state of Washington decided to issue a voter pamphlet for political candidates for the first time in the context of a primary election. As discussed more fully in Section III B below, examination of the roll-off rates for various offices in the 1996 primary compared to the post-pamphlet 2000 primary provides evidence of a direct and positive correlation between the introduction of a pamphlet and improvements in voter roll-off rates for nearly all offices.⁹⁴

A. Voter Opinion Surveys on Voter Pamphlets: Utah, California, and Oregon

These data rebut several of the criticisms in the academic literature that have been levied against voter pamphlets and provide guidance to policymakers contemplating adopting similar measures. Although most criticisms were specifically levied against voter pamphlets in conjunction with ballot initiatives rather than elections, it is useful to answer the criticisms and show how they fail if and when they are applied to voter pamphlets in the election context.

1. Voters are highly likely to read the voter pamphlets

The literature on the administration of elections is fraught with claims that voter pamphlets, where issued, often lie unread by the voting public. Although these claims typically arise in the context of ballot initiatives, there are several interesting elements to these assertions that prematurely declare this patient dead. First, several of the authors who make these claims⁹⁵ rely in whole or in

93. This survey was administered in 1980, 1982, 1986, 1988, 1990, and 1992.

94. Voter roll-off (also referred to as "voter drop-off") measures the tendency of a voter to vote for the more prestigious offices at the top of the ballot, but not for offices that are placed lower on the ballot. R. Darcy & Anne Schneider, *Confusing Ballots, Roll-Off, and the Black Vote*, 42 W. POL. Q. 347, 348 (1989).

95. See Jane S. Schacter, *The Pursuit of "Popular Intent": Interpretive Dilemmas in Direct Democracy*, 105 YALE L.J. 107, 142-43 (1995); see also Daniel M. Warner, *supra* note 16, at 83 n.189; Stephen H. Sutro, Comment, *Interpretation of Initiatives by Reference to Similar Statutes: Canons of Construction Do Not Adequately Measure Voter Intent*, 34 SANTA CLARA L. REV. 945,

part on the fine work of Thomas E. Cronin.⁹⁶ While Cronin's book does present a small amount of somewhat dated evidence to this effect, it concludes by leaving very little doubt that the author finds tremendous value in voter pamphlets. It is interesting to note that each of the listed authors cited Cronin as a scholar who disparages voter pamphlets as being infrequently used, yet not one took note that Cronin *recommended* voter pamphlets as one of his election reforms. He wrote that "[a] clearly presented official information pamphlet is essential to enable voters to make wise policy choices."⁹⁷ Hopefully, Cronin will henceforth be cited as he originally intended: as an advocate for, rather than a critic of voter information pamphlets.

There have been criticisms raised by others that voter pamphlets for judicial elections and ballot initiatives are simply instruments that are created at public expense, but remain unutilized.⁹⁸ The data from Utah present sound and empirical refutation of these criticisms. Of those Utahns who received a Utah Voter Information Pamphlet prior to the 1992 election, almost nine out of ten voters (87%) reported that they read all or part of it prior to the election. This percentage is consistent with prior election years. For example, 84% of voters in 1990 read all or part of the pamphlet, as did 84% of voters in 1988, 87% of voters in 1986, 86% of the voters in 1982, and 82% of the voters in 1980.

These are not voters who took a cursory glance through the pamphlet or paid a minimal amount of attention to it. The data paint a portrait of a remarkably engaged voting population. Consistently over the twelve years surveyed, approximately one-third of Utah voters receiving voter pamphlets reported that they read it all the way through. In 1992, 32% of voters read the entire pamphlet, compared to 35% in 1990, 36% in 1988, 39% in 1986, 40% in 1982, and 28% in 1980.

However, not all voters can be expected to be receptive to voter pamphlets and the data reflect that phenomenon. In each of the six surveys, approximately 10% of the voters who received pamphlets indicated that they did not read the pamphlet because they "weren't interested." According to the survey, voters in this category reported that they were generally not interested in the election, not registered to vote, and not knowledgeable about the issues and candidates. There was no strong support given to an alternate hypothesis that voters declined to read the voter pamphlet because they felt that they were adequately

954 (1994).

96. See THOMAS E. CRONIN, *DIRECT DEMOCRACY: THE POLITICS OF INITIATIVE, REFERENDUM, AND RECALL* 238 (1989).

97. *Id.*

98. See Neil Modie, *Judicial Races Less of a Snooze, but Choosing Still Tough*, SEATTLE POST-INTELLIGENCER, Oct. 30, 1998, at C10; see also Cásarez, *supra* note 24, at 748-49; DAVID MAGLEBY, *DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES* 130-44 (1984).

informed about the candidates and issues.

2. Voter pamphlets are overwhelmingly viewed as valuable

Another related criticism of voter pamphlets is that they are generally not useful because other sources are easier to comprehend and are more readily accessible, such as the news media.⁹⁹ The recent California, Utah, and Oregon data flatly contradict that assertion.

A 1998 survey of California registered voters found that they considered the voter pamphlets issued by the state to be their most important source of election information.¹⁰⁰ Seventy percent of respondents listed state-issued voter pamphlets as their most important source of election information compared to other sources, including newspapers, local television stories, other voter guides they received in the mail, and televised presidential debates. This survey was conducted in 1998, 1996, 1992, and 1990, providing a longitudinal perspective of California voter opinion. The data indicate that throughout the 1990s, California voters consistently listed state-issued voter pamphlets as their most important source of election information.¹⁰¹ Over the eight years of the survey, between 64% and 70% of California voters surveyed stated that they relied on state voter pamphlets the most.¹⁰²

Utah voters evaluated the Utah Voter Information Pamphlet over a twelve-year span and have consistently indicated a high level of satisfaction with it. The 1992 survey revealed that 92% of respondents who read the voter pamphlet found it to be “very helpful” or “somewhat helpful.” That percentage is slightly higher than the trend ten years preceding. In 1990, 88% found the voter pamphlet to be “very helpful” or “somewhat helpful,” compared to 90% in 1988, 90% in 1986, 87% in 1982, and 87% in 1980. The percentage of voters finding the voter pamphlet to be “very helpful” reached a high of 50% in 1986 and a low of 42% in 1988.

There has been consistent evidence that a small subset of the voters who read the Utah voter pamphlet found it to be “not very helpful” or “not helpful at

99. See MAGLEBY, *supra* note 98. One hazard in relying upon the media as a source of election information is that intervening events can divert media coverage from campaigns to other events, such as natural disasters, international incidents, or other emergencies. In 1994, representatives from Republican and Democratic campaigns acknowledged tremendous difficulty in using the media to reach Los Angeles-area voters during the O.J. Simpson trial. See Michael Janofsky, *Candidates Battle Simpson Case for Public's Attention*, S.F. CHRON., Aug. 14, 1994, at C4.

100. CHARLTON RESEARCH COMPANY, CHARLTON REPORT ON CALIFORNIA ISSUES, 1998, VOTER PAMPHLETS CONSIDERED MOST IMPORTANT SOURCE OF INFORMATION FOR ELECTION DECISION, http://www.charltonresearch.com/ca_iss_1198.html#two (last visited Apr. 4, 2002).

101. *Id.* The single exception occurred in the 1992 elections, when voter pamphlets were ranked behind television as voters' primary source of information. *Id.* fig.2.

102. *Id.*

all.” Over the twelve years surveyed, 6 to 8% of voters who read the pamphlet concluded that it was “not very helpful” and 1 to 3% of voters found it to be “not helpful at all.”

Although the Oregon study only covered the year 2000, the results are similar to the Utah and California findings. About 65% of Oregon respondents found the Oregon Voters’ Pamphlet to be helpful.¹⁰³ That this percentage is slightly lower than the percentage seen in other states could be largely explained by the fact that only 85% of this Oregon sample consisted of registered voters, in contrast to the Utah and California surveys of only registered voters. In the Oregon study, over one-quarter of all respondents (27.3%) considered the pamphlet to be “very helpful,” and over one-third (37.3%) considered it to be “somewhat helpful.”¹⁰⁴

3. Voter pamphlets are not viewed as too complicated

Often in regard to ballot initiatives, voter pamphlets have been referred to as too impenetrable for the average voter to understand.¹⁰⁵ Again, recent data indicate that this criticism is inapplicable to state-produced candidate voter pamphlets.

In each of the six surveys of Utah voters, voters were asked if they refused to read the Utah Voter Information Pamphlet on the grounds that they found it to be too complicated. In 1992, only 3% of voters who received a voter pamphlet reported that they found it to be too complicated to read. That percentage has remained remarkably constant over the twelve years the survey was given. In 1990, 2% of voters reported that the voter pamphlet was too complicated, as did 3% of voters in 1988, 1986, and 1980, and 2% of voters in 1982. What may be true of descriptions of ballot initiatives is certainly not true of election voter pamphlets.

The 2000 Oregon survey asked residents whether they found the Oregon Voters’ Pamphlet to be confusing. Only 10% of respondents found it to be “very confusing.”¹⁰⁶ Another 22% believed the Oregon survey to be “somewhat

103. OREGON SURVEY RESEARCH LABORATORY, OREGON ANNUAL SOCIAL INDICATOR SURVEY 2000 tbl.92, <http://darkwing.uoregon.edu/~osrl/oasis00/T92.htm> (last visited Apr. 4, 2002).

104. *Id.*

105. See Arthur Lupia, *Shortcuts versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 AM. POL. SCI. REV. 63 (1994), see also Eric Lane, *Men are not Angels: The Realpolitik of Direct Democracy and What We Can Do About It*, 34 WILLAMETTE L. REV. 579, 604 (1998); Shelia James Kuehl, *Either Way You Get Sausages: One Legislator’s View of the Initiative Process*, 31 LOY. L.A. L. REV. 1327, 1331 (1998); Becky Kruse, Comment, *The Truth in Masquerade: Regulating False Ballot Proposition Ads through State Anti-False Speech Statutes*, 89 CAL. L. REV. 129, 144–46 (2001); Harry N. Scheiber, *Forward: The Direct Ballot and State Constitutionalism*, 28 RUTGERS L.J. 787, 816 (1997).

106. OREGON SURVEY RESEARCH LABORATORY, OREGON ANNUAL SOCIAL INDICATOR SURVEY

confusing.”¹⁰⁷ The higher rates of confusion associated with the Oregon voter pamphlet compared to Utah’s might be attributed to the drastic differences in the length of the pamphlets used in the two states. For the general election in 2000, the Utah voter pamphlet was eighty-six pages in length and contained descriptions of candidates and four ballot measures. In Oregon, the 2000 general election voter pamphlet came in two volumes. Volume One, on ballot initiatives, was 375 pages in length and presented 607 arguments concerning twenty-six state measures appearing on the ballot. The length of Volume Two, on candidate information, varied by county, but remained well under 100 pages. It is critical that policymakers considering the adoption of voter pamphlets work to balance the length of the pamphlet with a voter’s estimated capacity to digest the information. In this regard, it is quite remarkable that 70% of Oregon voters stated that they did not find the lengthy voter pamphlets to be confusing.

4. Majorities view voter pamphlet information as unbiased

Another criticism that typically befalls voter pamphlets, particularly in describing referenda, is that the information is too slanted to be credible.¹⁰⁸ There is little danger of this criticism affecting the efficacy of candidate voter pamphlets because the pamphlets are careful to make clear that the candidate statements are written by the candidates themselves. In 1992, seven in ten voters who read the voter pamphlet felt that the information was presented in an unbiased manner, compared to 20% who felt that the information was biased and 10% who did not know whether a bias existed.¹⁰⁹ The percentage of voters who felt the information to be unbiased was highest in 1990, when three in four (74%) responded that the information was presented objectively. In 1988, 65% indicated that they found the information in the pamphlet to be unbiased, compared to 69% in 1986, 67% in 1982, and 73% in 1980.

A perception of bias appeared to increase in the later years of the survey. While only 10% of voters felt the Utah Voter Information Pamphlet was biased in 1980, which was the first year of the survey, that percentage peaked at 20% in 1992, the survey’s final year. Also in 1980, 18% of respondents stated that they

2000, *supra* note 103.

107. *Id.*

108. See Schacter, *supra* note 95, at 142. Such bias can be expensive. In the mid-1980s, New York printed—and then destroyed—500,000 pamphlets that it created touting the proposed environmental bond act. The state’s Environmental Conservation Department determined that the pamphlets crossed the line into advocating the passage of the bond issue and ordered that they be destroyed. The cost to the taxpayers was \$4500. See Jeffrey Schmalz, *No Shake-Up Seen in Cuomo’s Cabinet*, N.Y. TIMES, Dec. 8, 1986, at B1.

109. There were no follow-up questions that examined the direction of the perceived bias. This would present an interesting area for future empirical voter pamphlet research.

did not know whether there was a bias, whereas in 1992, only 11% did so, suggesting that some voters who were uncertain whether a bias existed had come to believe that the information presented showed a bias.

5. Majority of voters wants voter pamphlets to continue to be issued

Despite these criticisms, voters in Utah have voiced strong support for the continuation of voter pamphlets. In 1990, almost six out of every ten Utah voters surveyed (57%) believed that voter pamphlets should continue to be published and distributed.¹¹⁰ In prior surveys, similar percentages of voters supported the continued use of voter pamphlets. In 1988, 58% stated that they should continue, compared to 54% in 1986, 59% in 1982, and 68% of voters surveyed in 1980. Approximately one-third of all Utah voters surveyed from 1980 through 1992 stated that voter information pamphlets "definitely should" continue to be issued.

In 1980, Utah's voter dissatisfaction with voter pamphlets was at its lowest point, when only 26% of respondents stated that they should not continue. Dissatisfaction peaked in 1986, when almost two out of every five respondents (38%) advocated that voter pamphlets be discontinued. For the two latest years for which we have data, 1988 and 1990, one in three respondents (34%) stated that they should be discontinued.

For those respondents who indicated strong feelings on the subject, the percentage stating that the Utah Voter Information Pamphlets "definitely should" continue was typically double the percentage of those indicating that the pamphlets "definitely should not" continue (for example, 32% compared to 15% respectively in 1990; 30% to 17% in 1986; and 30% to 12% in 1982).

Of those voters who felt that the Utah pamphlets should continue to be distributed, 75% read the entire pamphlet, 83% found it to be "very" helpful and 74% believed it to be unbiased. Voters who wanted them to be discontinued had a very different profile. Two in five such voters did not read the pamphlet and over one-third stated that they had no interest in the election. Socio-economic factors may have also motivated the desires of some respondents to see the pamphlets discontinued. Over 40% of these voters had an annual income less than \$15,000, and the question on the desirability of continuing the pamphlet specifically mentioned how much the pamphlet cost to produce.¹¹¹ While it is not surprising that the segment of the population least interested in the electoral process was most emphatic about discontinuing the voter pamphlet,

110. This question did not appear on the 1992 survey.

111. *Id.* The question read: "It cost approximately \$94,000 (1990) to publish and distribute the Voters Information Pamphlet to the residents of Utah. Do you feel this practice should continue in the future?"

arguably, this segment of the population is the one that the pamphlet could most benefit. Efforts should be made to target this subpopulation specifically if voter pamphlets should come into wider distribution.

*B. Voter Pamphlets As a Possible Remedy to Voter Roll-off:
Washington Case Study*

1. Overview

The state of Washington issued its first voter pamphlet in 1912 in connection with a ballot initiative, but it was not until the 1970s that Washington's voter pamphlet began to feature candidate statements, profiles, and photographs. As with California and Oregon, Washington's use of voter pamphlets before general elections has such a lengthy history that it is impossible to capture "before and after" data to determine what effects the introduction of the voter pamphlet had on voter behavior. However, in 2000, Washington featured the debut of its primary election voter pamphlet that included information on candidates for state and federal offices. The 2000 Washington State Primary Voters Pamphlet was a joint effort between the Washington Secretary of State and the Chief Justice of the Washington Supreme Court. Although Washington had published a separate Judicial Voters Pamphlet for several years, the 2000 pamphlet was the first to put political candidate information in front of Washington voters prior to the primary election. Washington election data permits a comparison of voter roll-off rates for statewide offices from the 1996 primary election (pre-pamphlet) with voter roll-off rates from the 2000 primary election (post-pamphlet). The results strongly suggest that the voter pamphlets increased political participation by diminishing voter roll-off.

One set of studies on voter roll-off argues that the primary cause of roll-off is not that a typical voter becomes fatigued or confused by the ballot, but that the voter has insufficient information upon which to base a decision.¹¹² Thus, such a voter would rationally abstain from voting for certain offices due to a lack of information concerning the office, candidates, or both.¹¹³ Presumably,

112. See Martin Wattenberg et al., *How Voting is Like Taking an SAT Test*, 28 AM. POL. Q. 234, 238 (2000). For the perspective that ballot configuration has predominant effect on voter roll-off, see Darcy & Schneider, *supra* note 94, at 362. See generally Shaun Bowler et al., *Ballot Propositions and Information Costs: Direct Democracy and the Fatigued Voter*, W. POL. Q. 559 (1992) (finding that ballot position affects voter roll-off as voters skip the middle portion of the ballot).

113. See *id.*; see also John Pothier, *Drop-Off, the Vanishing Voters in On-Year Elections, and the Incumbency Advantage*, 15 AM. POL. Q. 123 (1987), see generally Walter Dean Burnham, *The Changing Shape of the American Political Universe*, 59 AM. POL. SCI. REV. 7 (1965); John E. Mueller, *Voting on the Propositions: Ballot Patterns and Historical Trends in California*, 63 AM. POL. SCI. REV. 1197 (1969).

the dissemination of a voter pamphlet in the 2000 primary would lower information costs to Washington state voters and thus curtail roll-off rates for various offices, consistent with the conclusions that have been made in the academic literature.

Of course, any improvements in Washington voter roll-off from the 1996 primary to the 2000 primary after the introduction of the voter pamphlet cannot be reliably attributed *in toto* to the introduction of the voter pamphlet. That type of conclusion can only be reliably drawn after a more thorough examination of the data using multivariate analysis. As an initial step, however, it is a useful exercise to examine roll-off rates before and after the introduction of the voter pamphlet to test whether an improvement was seen that might possibly be attributed to voter pamphlets by an enterprising political scientist.

2. Review of the Washington roll-off data for the 1996 and 2000 primaries

The improvement in voter roll-off rates for statewide offices from the 1996 primary to the 2000 primary in Washington was dramatic. The overall roll-off rate in the primaries fell almost 17% in 2000 after the introduction of the voter pamphlet.¹¹⁴ The number of roll-off votes decreased by more than 20,000 from 1996 to 2000. Out of nine statewide offices on the ballot, voter roll-off improved for eight from 1996 to 2000.¹¹⁵ It also should be noted that in 1996 and 2000, there were multiple candidates running for each office. Therefore, roll-off rates were not biased by offices that had candidates running unopposed.

It might be argued that the significant improvement in roll-off rates in the primaries from 1996 to 2000 might not be attributable to the introduction of the voter pamphlet—especially if the improvement in roll-off rates was echoed in the general election for those years. Examination of the data reveals that roll-off rates for the general election did not reflect the improvement that was shown in the primaries. Voter roll-off rates actually *worsened* in the general elections for those years while roll-off rates improved 17% in the primaries,¹¹⁶ strongly suggesting that some phenomenon quite effectively increased voter interest and participation in the 2000 primary that was not in evidence for the 2000 general election.

The first statewide office listed on the ballot was Governor. Roll-off rates

114. See Washington Secretary of State, Elections Division, http://www.secstate.wa.gov/elections/election_results.aspx (Apr. 4, 2002). In the 1996 primary, there was 14.08% roll-off, and in 2000, only 11.72% overall. See *id.*

115. *Id.* The sole exception was the office of Insurance Commissioner, which experienced almost no change in roll-off between the two years (15.4% in 1996 and 15.6% in 2000). *Id.*

116. *Id.* Roll-off rates in the general election were 7.22% in 1996 and increased to 8.57% in 2000, approximately a 19% increase in roll-off rates, compared to the 17% decrease seen in the primaries. *Id.*

in the primaries from 1996 to 2000 decreased by 23% in voting for that office, where the 2.71% roll-off rate in 1996 decreased to 2.08% in 2000. In absolute numbers, 34,000 voters rolled off in the 1996 primary for the Governor's race, but only 27,500 did so in 2000. For Lieutenant Governor, roll-off rates decreased by almost 14%, from 14.51% in 1996 to 12.55% in 2000. The race for Secretary of State showed only a slight decrease in voter roll-off from 1996 to 2000, improving by just over 3%. The trend of diminishing improvements in voter roll-off rates abruptly reversed itself with the fourth office on the ballot, State Treasurer, where voter roll-off was 17.7% in 1996, but only 12.7% in 2000—a decrease of a robust 28%.¹¹⁷ Roll-off improvements for the subsequent offices were similarly impressive. The race for State Auditor exhibited 15.03% roll-off in 1996 and only 11.02% roll-off in 2000, a decrease of almost 27%. Similarly, voter roll-off for the election of Attorney General of Washington improved 24%, from 10.7% in 1996 to 8.1% in 2000.

The next office, Commissioner of Public Lands, was the seventh office on the ballot. Any fatigued voter would be likely to roll off at this point, if not sooner. In 2000, roll-off rates for this office *dropped* a remarkable 33%, from 15% roll-off in 1996 to only 10% roll-off in the 2000 primary. To have nine out of every ten voters actively participating in a primary in the selection of the next Commissioner of Public Lands is an impressive showing of voter participation, no matter how it was achieved. In absolute numbers, 188,000 rolled off for this office in 1996, but only 133,000 did so in 2000—a difference of 55,000 voters. The eighth office on the ballot, Superintendent of Public Instruction, saw voter roll-off rates decrease by 9%, from almost 21% in 1996 to 19% in 2000.

3. Interpretation and analysis of the data

If, as the academic literature suggests, the best-informed voters make the voting decisions that most accurately reflect their preferences, policymakers should seriously examine (and then promote) any tool that aids voters to become more informed. How voters receive and use information has received significant attention in the academic literature and it seems that electoral information tends to coalesce around the two ends of the information spectrum. At one end of the spectrum, the type of information a voter receives may be termed “encyclopedic”—a lengthy, dense description of the issues at stake which is apt to confuse and dishearten voters.¹¹⁸ Certain voter pamphlets that provide descriptions of complex ballot initiatives provide a perfect example.¹¹⁹ Here, informa-

117. *See id.* In both years, four candidates ran for State Treasurer, which seemingly denies a causal relationship between the quantity of alternatives and roll-off rates. *See id.*

118. *See* Lupia, *supra* note 105, at 63.

119. In addition to the lengthy Oregon voter pamphlet described above, the 2000 voter pamphlet

tion costs are high because reading and digesting the information may be extremely time-consuming and difficult, if not impossible. At the other end of the information spectrum are "information shortcuts" often used by voters, where they ascertain the opinions of peer groups and colleagues to make decisions on whether and how to vote.¹²⁰ The notable disadvantage to information shortcuts is that they might be unreliable or misleading, or that they may otherwise cause the voter to vote in such a way that would not accurately reflect his preferences.

There are conflicting studies as to whether badly informed voters are fully able to utilize information shortcuts to emulate the behavior of well-informed voters.¹²¹ Therefore, there is compelling justification for federal efforts to close the gap between low information voters and high information voters. Well-designed and well-written candidate voter pamphlets would seem to bestride the narrow information spectrum like a Colossus. By having limitations on candidate statements and by being mailed to every voting household, the pamphlets can serve as an official document that is easily obtainable and that presents unbiased information in a straightforward manner. Thus, voter pamphlets maintain the advantages of both encyclopedic information (thorough, from an official source) and information shortcuts (concise, easy to obtain). Conversely, voter pamphlets avoid the disadvantages of encyclopedic information (intimidating length, intractability) and information shortcuts (possibly unreliable or misleading).

IV. CONCLUSION

The most recent data available indicate that voters are, and have long been, highly likely to read voter pamphlets, find them to be valuable, and want their use to continue. In addition, there is strong evidence of a direct and positive correlation between the introduction of a voter pamphlet for the Washington primary and remarkable improvements in voter roll-off in eight out of nine offices on the ballot. At a time when the U.S. Congress and state legislatures nationwide are considering expensive alternative voting procedures and voting technologies that may take millions of dollars and several years to implement, a low-cost solution remains mysteriously underutilized. There is overwhelming evidence that federal and state legislatures are searching for an efficient, popu-

from San Francisco has been criticized as unduly burdensome. The San Francisco pamphlet contained 400 arguments in response to eighteen local measures, provided half a page each for candidates for over 100 local offices, exceeded 300 pages, and weighed over 1.5 pounds. See Edward Epstein, *S.F. Voter Guide for Fall Ballot is Biggest Ever*, S.F. CHRON., Sept. 1, 2000, at A21.

120. See Lupia, *supra* note 105, at 63.

121. See *id.* at 72 (concluding that shortcuts generally work). But see Larry M. Bartels, *Uninformed Votes: Information Effects in Presidential Elections*, 40 AM. J. POL. SCI. 194, 214-18 (1996) (concluding that shortcuts do not completely suffice).

lar, extensively evaluated, and low-cost election reform that can simultaneously address many of the vexing problems that plague election administration in the United States. By all of those criteria, state voter pamphlets have earned a spot at the top of any lawmaker's list. It is long overdue that Congress act to enable the states to produce and disseminate voter pamphlets so that the impressive results of Utah, California, Oregon, and Washington may be replicated in other states nationwide before the next election cycle.

